

REMARKS

Applicants respectfully request reconsideration and withdrawal of the final rejections of claims 13-15, 18, 20-22, and 25-28, in view of the remarks herewith, which, together with Applicants' previous submissions, are believed to place the application into condition for allowance. The Examiner is thanked for advising Applicants that claims 23 and 24 are allowable.

The invention provides for, *inter alia*, synergistic herbicidal compositions comprising broad spectrum herbicides such as phosphonate derivatives, for example glyphosate, and phosphinate derivatives, for example, glufosinate and a secondary herbicide for controlling harmful plants in tolerant or resistant cotton crops.

Claims 13, 15, 18, 20, 21, 25 and 26 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Ruegg et al. (U.S. 6,180,563, "Ruegg '563"). Applicants respectfully traverse the rejection and urge that Ruegg '563 neither teaches nor enables the instant invention.

The Examiner is respectfully reminded that a two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain **all** of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). Further, for a proper anticipation rejection, the reference "must clearly and unequivocally disclose the claimed compound or direct those skilled in the art to the compound without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference." *see In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972).

Against this background, Applicants urge that Ruegg '563 is not properly cited as 102(e) reference. Specifically, contrary to the Examiner's belief, Ruegg '563 does not teach or enable

the use of the herbicidal combination comprising glufosinate plus pyrithiobac-sodium for control of harmful plants in tolerant or resistant cotton crops. Applicants urge that at most, Ruegg '563 arguably provides for either compounds of formula (I) plus glufosinate or compounds of formula(I) plus pyrithiobac-sodium. Thus, the combination of glufosinate plus pyrithiobac-sodium without compounds of formula (I) are not taught or enabled by Ruegg '563. Accordingly, reconsideration and withdrawal of the Section 102 rejection is respectfully requested.

Claims 27 and 28 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over the combined teachings of Ruegg et al. (U.S. 6,180,563, "Ruegg '563") and Ruegg et al. (U.S. 5,965,486, "Ruegg '486"); claims 13-15, 18, 20-22, 25 and 26 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over the combined teachings of Ruegg et al. (U.S. 5,965,486, "Ruegg '486") and Tymonko et al. (U.S. 4,822,401, "Tymonko").

These rejections will be addressed collectively and are respectfully traversed. Applicants urge that none of the cited references serve to teach, suggest or motivate a skilled artisan to practice the presently claimed invention.

As described above, Ruegg '563 relates to herbicidal compositions wherein compound of formula (I), which belongs to the chemical class of pyridylsulfonyl ureas, is an essential component of the composition. Accordingly, Applicants urge that Ruegg '563 does not teach or suggest *inter alia* the herbicidal composition recited in claims 27 and 28.

Further, Applicants urge that Ruegg '486 does not teach or suggest *inter alia* the present invention since it relates to herbicidal compositions which require fluthiacet-methyl, a compound which is not a part of the instant herbicidal composition. Thus, Ruegg '486 does not correct the

deficiencies found with Ruegg '563 or vice-versa and the rejection does not establish a *prima facie* case of obviousness.

Finally, Tymonko does not correct the deficiency found in Ruegg '486 and thus contrary to the Examiner's belief, Applicants urge that it would not be obvious to one skilled in the art to combine Ruegg '486 and Tymonko in order to practice the instantly claimed invention.

Tymonko relates to a method for controlling weeds in various crops, such as cotton, by using clomazone and an antidote/safener. Tymonko also relates to organophosphorus compounds which belong to class of insecticides. In contrast, the organophosphorous compounds of the instant invention, such as glyphosate and glufosinate, belong to a class of herbicides. Moreover, the insecticidal organophosphorus compounds described in Tymonko are phosphoric acid derivatives, whereas the herbicidal organophosphorus compounds of the instant application are phosphinate derivatives (glufosinate) and phosphonate derivatives (glyphosate). Thus, a skilled artisan would not be motivated to combine the cited documents in order to practice the instant invention.

The Office Action further states that the "Examiner argues that Applicant does not provide synergistic data for a combination comprising glufosinate and pyrithiobac-sodium." Applicants respectfully disagree and point out that the inventive combinations of the instant invention clearly exhibit synergistic properties as described in the specification beginning on page 4. In addition, the data presented in Table 5 (page 33, 5th and 6th row) clearly demonstrate superior synergistic activity of the elected combination comprising glufosinate plus pyrithiobac-sodium (A1.2 +B2.4).

Accordingly, it is respectfully suggested that one skilled in the art would not have expected from the combined teachings of Ruegg '653 and Ruegg '486, or the combined

teachings of Ruegg'486 and Tymonko, that combinations according to the present invention would exhibit superior synergistic effects.

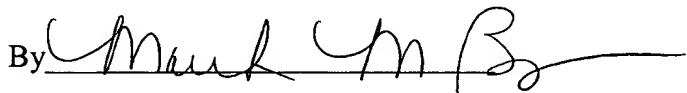
Consequently, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

In view of the foregoing, Applicants respectfully request consideration and entry of the instant paper, and reconsideration and withdrawal of the final refusal. In the alternative, Applicants respectfully request consideration and entry of the instant paper, since it places this application into better condition for purposes of appeal.

It is believed that no fees are required by the instant submission. However, if any fees are required, or if any overpayment has been made, please charge Deposit Acct. No. 50-0320.

Respectfully submitted,

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